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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/287,664	04/07/1999	DAVID A. RUSSO	01222.0034-0	6563

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EXAMINER

BRUNSMAN, DAVID M

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 10/29/2002

21

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/287,664

Applicant(s)

RUSSO ET AL.

Examiner

David M Brunsman

Art Unit

1755

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: 1-27.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 28-32.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
David M Brunsman  
Primary Examiner  
Art Unit: 1755

Continuation of 2. NOTE: The amendment proposed in response to the rejection over the prior art materially affects the scope of the instant claims and would require further consideration and/or search.

Continuation of 5. does NOT place the application in condition for allowance because: In the prior art rejection: claim 30 is narrowest of claims 28-31 and falls within the scope of each of 28, 29, 31 and 32. For purposes of clarity and economy of language, the rejection is structured to address each limitation of claim 30, the remaining claims being rejected as at least containing that particular species. Furthermore, the combination of Si-oxide and another metal oxide anticipates a limitation to a claim "comprising" metal oxides. The compounds of Table D of Gordon establish that one of ordinary skill in the art would expect accelerants (O<sub>2</sub>, N<sub>2</sub>O, exemplified by Gordon that are effective for silica precursors to be effective with other metal oxide precursors and combinations thereof. Note well that Gordon also establishes that one of ordinary skill in the CVD art considers Si a metal. Lagendijk teaches oxygen increases deposition rate and film density (see column 5, lines 32-38). The examiner has clearly shown why one of ordinary skill in the CVD art would be motivated by the teaching of Gordon to include an additional metal oxide in the compositions of Lagendijk. The question of modifying the Gordon reference by some teaching of Lagendijk instead has not been addressed as that is not the rejection that was made. With respect to Gordon teaching away, example 2 of Gordon teaches premature hydrolysis of Al pentanedionate is to be avoided. It does not address CVD processes in general and such an interpretation is explicitly refuted by Table E, which includes H<sub>2</sub>O as a useful oxygen source (accelerant). Examiner is fully supported by MPEP 2143.01. With respect to the rejection under section 251 examiner relies upon the arguments made in previous office actions, pausing only to note that the MPEP defines surrendered subject matter as made in response to a "rejection or objection" without limitation to the sections under which said rejection or objection is made..

Continuation of 10. Other: The treatment of the "non-priority PCT applications" is moot as they are no longer being relied upon as part of the prosecution history of the present application. With respect to the holding of finality, claims 28 and 31 were amended, necessitating a new rejection, in paper #10, the paper filed in response to the office action on the merits that immediately preceded the final rejection. (Papers 11, 13, 16 and 17 are not office action on the merits). With respect to the offer to dedicate claims to the public, it is deemed inappropriate at this time as there is no provision for it at this stage of the prosecution.